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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170720688-8385-02]

RIN 0648-BH07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Management Measures; Amendment 47

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS hereby issues regulations to implement management measures described in Amendment 47 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 47). This final rule revises the stock annual catch limit (ACL) for vermilion snapper. Additionally, Amendment 47 establishes a proxy for the estimate of the stock maximum sustainable yield (MSY). The purpose of this final rule is to revise the stock ACL for vermilion snapper in the Gulf of Mexico

(Gulf) consistent with the most recent stock assessment.

DATES: This final rule is effective [*insert date 30 calendar days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 47, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/am47/docs/PDFs/gulf_reef_am47_vermilion_final.pdf.

FOR FURTHER INFORMATION CONTACT: Lauren Waters, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: Lauren.Waters@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes vermilion snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 19, 2017, NMFS published a notice of

availability for Amendment 47 and requested public comment (82 FR 60168). On December 27, 2017, NMFS published a proposed rule for Amendment 47 and requested public comment (82 FR 61241). The proposed rule and Amendment 47 outline the rationale for the actions contained in this final rule. Unless noted, all weights described in this final rule are in round weight. A summary of the management measure described in Amendment 47 and implemented by this final rule is provided below.

In 2016, a Southeast Data, Assessment, and Review (SEDAR) standard assessment for vermilion snapper was conducted (SEDAR 45) and the stock status was evaluated using several MSY proxies. Under all proxies evaluated in SEDAR 45, overfishing was not occurring and the stock was not overfished. The Council's Scientific and Statistical Committee (SSC) determined that the most appropriate proxy for MSY is the yield when fishing at a mortality rate corresponding to 30 percent spawning potential ratio ($F_{30\% SPR}$).

SEDAR 45 also included projections for the overfishing limit and the acceptable biological catch (ABC). The SSC provided the Council two recommendations for ABC: one that

is derived from fishing at 75 percent of the MSY proxy and results in a declining ABC from 2017 through 2021, and one that is derived using the average of 2017-2021 ABCs and results in a constant ABC. The two ABC recommendations are equivalent in terms of maintaining the stock status and the Council selected the constant catch scenario that yielded an ABC of 3.11 million lb (1.41 million kg).

Management Measure Contained in this Final Rule

This final rule revises the stock ACL for Gulf vermilion snapper consistent with the results of SEDAR 45 and the SSC's new ABC recommendation. The current ACL of 3.42 million lb (1.55 million kg), exceeds the ABCs recommended by the Council's SSC. Therefore, the Council determined that the ACL for vermilion snapper should be decreased to equal the constant catch ABC and this final rule will set the stock ACL at 3.11 million lb (1.41 million kg).

Measures in Amendment 47 not Codified through this Final Rule

In addition to the measure implemented through this final rule, Amendment 47 establishes a proxy for vermilion snapper MSY.

For vermilion snapper, the Council's SSC recommended that a proxy be used for MSY. The Council's SSC recommended $F_{30\%}$ SPR as the MSY proxy from SEDAR 45, and the Council agreed. Under this proxy, the stock is not overfished or undergoing overfishing.

Comments and Responses

NMFS received 19 comments from individuals on the notice of availability and proposed rule for Amendment 47. Some comments addressed issues beyond the scope of Amendment 47 or the proposed rule and, therefore, are not responded to here. Specific comments related to Amendment 47 and the proposed rule are grouped by topic and are summarized and responded to below.

Comment 1: Several commenters stated that the vermilion snapper stock ACL should not be reduced. One noted that the vermilion snapper stock is not overfished or undergoing overfishing and another stated the ACL should not be reduced just because the annual vermilion snapper harvest has been less than the current ACL. One commenter expressed concern that reducing the ACL would lead the stock to become overfished.

Response: NMFS disagrees that the vermilion snapper stock ACL should not be reduced. Regardless of a stock's overfished or overfishing status, or its prior landings history, the Council is required to set the ACL equal to or less than the ABC recommended by the SSC. The current ACL of 3.42 million lb (1.55 million kg) was established in 2012 using mean landings during 1999-2008, plus one standard deviation (76 FR 82044; December 29, 2011). In 2016, the SEDAR 45 assessment for vermilion snapper was conducted. Based on the assessment results and the recommended MSY proxy, the SSC provided two ABC recommendations: An ABC that declined from 3.21 million lb (1.46 million kg) to 3.03 million lb (1.37 million kg) by 2021, or a constant catch ABC of 3.11 million lb (1.41 million kg). Setting the catch level consistent with either recommendation is expected to prevent overfishing and prevent the stock from becoming overfished. The Council chose to set the ACL equal to the constant catch ABC to maintain stability for fishery participants while providing the maximum allowable harvest.

Comment 2: Reducing the stock ACL will result in an in-season closure for vermilion snapper, or at least, increase the likelihood of such a closure.

Response: The revised stock ACL may increase the likelihood of a closure. The current AM for vermilion snapper requires NMFS to close the commercial and recreational fishing seasons if the combined commercial and recreational landings reach or are projected to reach the stock ACL. From 2012 to 2016, annual vermilion snapper landings were less than the previous ACL of 3.42 million lb (1.55 million kg), with no definitive trend in landings. Preliminary total landings for 2017 are 3.22 million lb (1.46 million kg). Therefore, if the stock ACL of 3.11 million lb (1.41 million kg), implemented in this final rule had been effective in 2017, an in-season closure may have occurred in December 2017. However, as explained in the response to *Comment 1*, the reduction in the ACL is required as a result of the most recent stock assessment results and ABC recommendation from the Council's SSC regardless of the possibility of an in-season closure.

Comment 3: Reducing the ACL could negatively impact small businesses in the charter vessel/headboat (for-hire) industry.

Response: NMFS acknowledges that there is the potential for a vermilion snapper closure prior to the end of the fishing year as a result of the revised stock ACL, and that such a closure could result in some negative impacts on for-hire businesses. However, based on landings since 2012, NMFS expects that any closure would occur very late in the fishing year. Additionally, vermilion snapper is only one species within the reef fishery management unit and, therefore, any closure will not impact the ability to harvest the other reef fish species targeted on for-hire trips. For these reasons, NMFS does not expect this final rule to result in any substantial effects on for-hire trips.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 47, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for that determination was published in the proposed rule.

One public comment (*Comment 3*) stated that the charter vessel and head boat industry is very important to the Panama City Beach area of Florida, and that the action of reducing the ACL could affect many small businesses there. The RFA requires evaluating the direct economic impacts of a rule on small entities. Only recreational fishers and commercial fishing businesses would be directly affected by the rule and as explained in the classification summary,

anglers (recreational fishers) are not considered small entities as that term is defined in 5 U.S.C. 601(6).

The determination that this rule would not have a significant adverse economic impact on a substantial number of small entities relied, in part, on the expectation that landings of vermilion snapper would continue to be less than the stock ACL of 3.11 million lb (1.41 million kg), implemented through this final rule. After publication of the proposed rule, preliminary landings of the stock for 2017 were released, which exceed the proposed reduced ACL of 3.11 million lb (1.41 million kg). Consequently, an updated analysis was performed to reassess the economic impacts on small businesses. The updated analysis reaffirmed the conclusion that the rule will not have a significant adverse economic impact on a substantial number of small entities. Its factual basis is as follows.

Any business that operates a commercial fishing vessel that harvests vermilion snapper in the Gulf exclusive economic zone (EEZ) must have a valid Federal Gulf commercial reef fish permit that is specifically assigned to that vessel. The permit is a limited access permit. From 2012 through 2016, an annual average of 347 permitted

vessels landed vermilion snapper. It is estimated that those vessels are operated by 248 to 252 businesses in the commercial fishing industry.

Many businesses with vessels with a Gulf reef fish permit operate in multiple industries. For example, 10 percent of the businesses have Federal dealer permits indicating they are also in the fish/seafood merchant wholesalers (NAICS 424460) industry. Also, approximately 26 percent of the businesses have at least one vessel with a for-hire Gulf reef fish permit, which indicates they also operate in the for-hire fishing industry (NAICS 487210).

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. The average federally permitted vessel that landed vermilion snapper from 2012 through 2016 had annual dockside revenue from

landings of all species that varied by gear from \$24,399 to \$323.916 (2016 \$). Based on those averages and the estimates of individual fleet sizes that range from one to 16, it is concluded that most to all of the businesses that harvest vermilion snapper from the Gulf EEZ are small businesses.

Amendment 47 will establish an MSY proxy for vermilion snapper and that has no direct impact on any small business.

This final rule will also decrease the stock ACL of vermilion snapper. The stock ACL is and has been 3.42 million lb (1.55 million kg) since 2012. This final rule decreases the stock ACL to 3.11 million lb (1.41 million kg).

The fishing year for vermilion snapper begins January 1 and ends on December 31 each year. If combined commercial and recreational landings reach or are projected to reach the stock ACL, the fishing season is closed early. Since 2012, when this in-season closure provision was put in place, there have been no early closures because combined annual commercial and recreational landings have been less

than the stock ACL. However, 2012 and 2017 landings exceeded 3.11 million lb (1.41 million kg).

Although there is expected to be no early closure, this analysis includes consideration for what could be the impact on small businesses if the season closed by the middle of December. A mid-December closure could reduce vermilion snapper landings by up to 4.5 percent. The average vessel from 2012 through 2016 would lose approximately 186 lb (84 kg), gutted weight, of vermilion snapper with a dockside value of \$588 (2016 \$) annually. That \$588 represents 0.4 percent of annual dockside revenue from all species landed by that average vessel. When evaluated by gear type, the average annual loss of dockside revenue would vary from \$6 to \$861 per vessel (in 2016 dollars), with the largest loss by the average vessel that harvests vermilion snapper using bandit gear. The percentage annual loss would range from 0.01 percent to 0.62 percent of average annual dockside revenue per vessel, with the largest loss to vessels using bandit gear.

From those percentages, it is concluded that there would not be a significant adverse economic impact on a

substantial number of small businesses and, hence, the prior certification still stands.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Recreational, Vermilion snapper.

Dated: May 8, 2018

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.41, revise the last sentence of paragraph (j) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(j) * * * The stock ACL for vermilion snapper is 3.11 million lb (1.41 million kg), round weight.

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